

HOUSE BILL 3516

By Jones U

AN ACT to amend Tennessee Code Annotated, Title 57,  
Chapter 3, relative to wine shipment.

WHEREAS, the Federal Trade Commission issued a staff report in 2003 finding that banning interstate direct shipments, states limit consumers' access to thousands of labels from smaller wineries; and

WHEREAS, the FTC report further found that states that permit interstate direct shipping generally report few or no problems with shipments to minors; and

WHEREAS, the FTC report further stated that states that have sought to achieve voluntary compliance with their tax laws report few, if any, problems with tax collection; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 57, Chapter 3, is amended by adding the following as a new, appropriately designated section:

(a) Notwithstanding any law, rule or regulation to the contrary, any person currently licensed in this or any other state as a wine manufacturer, producer, supplier, importer, wholesaler, distributor or retailer who obtains a wine direct shipper license, as provided in this section, may ship up to two (2) nine-liter cases of wine annually directly to a resident of Tennessee who is at least twenty-one (21) years of age for such resident's personal use and not for resale.

(b) Before sending any shipment to a resident of Tennessee the licensee must first:

- (1) File an application with the alcoholic beverage commission;
- (2) Pay a three hundred dollar (\$300) registration fee;

(3) Provide to the commission a copy of its current alcoholic beverage license issued in this or any other state; and

(4) Obtain from the commission a wine direct shipper license.

(c) All licensees shall:

(1) Not ship more than two (2) nine-liter cases of wine annually to any person for that person's personal use and not for resale;

(2) Not ship to any address in a county or municipality identified by the commission as a county or municipality that has not authorized the sale of alcoholic beverages by local option election;

(3) Ensure that all containers of wine shipped directly to a resident in this state are conspicuously labeled with the words "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY";

(4) If located outside of this state, report to the commission annually the total amount of wine shipped into the state the preceding calendar year;

(5) If located outside of this state, annually pay to the department of revenue all sales taxes and excise taxes due on sales to residents of this state in the preceding calendar year, the amount of such taxes to be calculated as if the sale were in this state at the location where delivery is made;

(6) If located within this state, provide the department of revenue any additional information deemed necessary beyond that already required for retail sales from the winery tasting room to ensure compliance with this section;

(7) Permit the commission to perform an audit of the licensee's records upon request; and

(8) Be deemed to have consented to the jurisdiction of the commission or any other state agency and the Tennessee courts concerning enforcement of this section and any related laws, rules or regulations.

(d) A licensee may annually renew its license with the commission by paying a one hundred fifty dollar (\$150) renewal fee and providing the commission a copy of its current alcoholic beverage license issued in this or any other state.

(e) The alcoholic beverage commission and the department of revenue may promulgate rules and regulations to create a wine direct shipper license and to effectuate the purposes of this section in accordance with title 4, chapter 5.

(f) The commission may enforce the requirements of this section by administrative proceedings to suspend or revoke a wine direct shipper license, and the commission may accept payment of an offer in compromise in lieu of suspension, such payments to be determined by rule promulgated by the commission.

(g)

(1) Pursuant to the Twenty-First Amendment Enforcement Act, under federal law, if the attorney general has reasonable cause to believe that a person is engaged in, or has engaged in, any act that would constitute a violation of this or any other state law regulating the importation or transportation of any intoxicating liquor, including wine, the attorney general may bring a civil action for injunctive relief, including a preliminary or permanent injunction, against the person, as the attorney general determines to be necessary to:

(1) Restrain the person from engaging, or continuing to engage, in the violation; and

(2) Enforce compliance with the state law.

(2) In addition, if the commission or the commissioner of revenue has reasonable cause to believe that a person is engaged in, or has engaged in, any act that would constitute a violation of this or any other state law regulating the importation or transportation of any intoxicating liquor, including wine, the commission or the commissioner shall report the violation to the federal tobacco tax trade bureau for action by the TTB for shipping wine into Tennessee in violation of this section, which according to federal law includes revocation of the winery's basic winery permit.

(h)

(1) Shipments of wine direct to residents in Tennessee from persons who do not possess a current wine direct shipper license from the commission are prohibited.

(2) Any person who knowingly makes, participates in, transports, imports or receives a shipment in violation of subdivision (h)(1) is guilty of a Class B misdemeanor.

(3) Without limitation on any punishment or remedy, criminal or civil, any person who knowingly makes, participates in, transports, imports or receives a shipment in violation of subdivision (h)(1) commits an unfair trade practice.

SECTION 2. For purposes of rulemaking, this act shall take effect upon becoming a law, the public welfare requiring it; for all other purposes, this act shall take effect July 1, 2008, the public welfare requiring it.